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NOTES

LEGAL PROBLEMS OF MIGRANT AGRICULTURAL WORKERS IN THE RED RIVER VALLEY OF NORTH DAKOTA AND MINNESOTA

I. INTRODUCTION

Each spring the Red River Valley of North Dakota and Minnesota experiences an influx of approximately 11,000 migrants who arrive to labor in the sugar beet fields.¹ These migrants and their families generally arrive with little or no money, encumbered by debt, and uncertain as to the prospects of steady employment. How they will fair in this endeavor will depend largely on their own initiative and upon the laws, rules, and regulations which affect their existence.

This note will deal with the "legal" problems² which confront the migrant agricultural worker who travels to this area. An attempt will be made to describe the migrant poverty cycle and possible remedies to improve the migrants' future existence will be examined.

II. LIFE STYLE AND BACKGROUND OF THE MIGRANT WORKER

A. THE "MIGRANT STREAM AND EMPLOYMENT PATTERNS"

In order to understand the legal problems of migrant workers, it is essential to understand the migrants' mode of living. The

1. C. Maldonado, *The Mexican-American Migratory Workers as a Consumer: A Study in the Red River Valley* 1, May 21, 1971 (unpublished independent study in the University of North Dakota Library).

2. By the very nature of this note, entitled "The Legal Problems of the Migrant . . .", shortcomings are emphasized. Certain efforts have been made in particular areas. For example, the Grafton, North Dakota, Migrant Health Clinic was very successful. The Migrant School Program in this area has generally provided a needed service for migrant families. Certain welfare offices have been very cooperative within their guidelines, and there are some good housing conditions. There are, however, conditions which need to be

"migrant" has been variously defined, but the term generally means someone who has left his home county sometime during the year to live away from home to do agricultural work.³ In addition, the migrants' primary employment is in agriculture, on only a seasonal or other temporary basis.⁴ Most American migrants follow three major routes north from areas along the southern border of the United States.⁵ In 1970 there were approximately 196,000 individuals engaged in migratory farm work,⁶ and it is estimated that about half of the migrants are Mexican-Americans from south Texas.⁷

Migratory workers must travel because of economic necessity. For some this is because the number of unskilled jobs available locally is limited; for others migratory work is an attempt to obtain higher wages.⁸ The lack of jobs and low pay are a result of geography and tradition. The migrant must endure competition from cheap labor from Mexico while contending with increased mechanization and new farming practices in the northern states. He is unable to shift into other jobs because of his lack of education and training. As the migrant travels, his children too will suffer a lack of education by this continual moving.⁹ This tends to perpetuate the migrant cycle from generation to generation. The average educational level of the migrant is 8.6 years of schooling; over 17 per cent are functionally illiterate.¹⁰

Although indigents are often condemned as being poor because they "do not want to work," this criticism does not apply to migrants. The migrant worker tries to work and often travels very far to work; yet the migrant worker averaged only 116 days of employment in 1969.¹¹ The migrant travels to work rather than go on "the welfare" in a large city. Additionally the migrant is very appre-

pointed out and changed if the migrant agricultural worker is to enjoy a decent standard of living.

3. *Hearings on Migrant and Seasonal Farmworker Powerlessness Before the Subcomm. on Migratory Labor of the Senate Comm. on Labor and Public Welfare*, 91st Cong., 1st & 2d Sess., pt. 8-B, at 5594 (1970) (hereinafter cited as *Powerlessness Hearings*). These hearings were conducted in 1969-70 and were published in 8 parts.

4. 29 C.F.R. 41.12(a) (1973).

5. See Appendix A., Map depicting the "Migrant Stream". SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE, SUBCOMMITTEE ON MIGRATORY LABOR, S. REP. NO. 83, 91st Cong., 1st Sess. 3 (1969).

6. GAO, REPORT ON THE IMPACT OF FEDERAL PROGRAMS TO IMPROVE THE LIVING CONDITIONS OF MIGRANT AND OTHER SEASONAL FARMWORKERS: B-1774 86, at 17 (1973). See Appendix B *infra*.

7. *Powerlessness Hearings*, *supra* note 3, pt. 8-B, at 5594.

8. *Hearings on S. 1861 & S. 2259 Before the Subcomm. on Labor of the Senate Comm. on Labor and Public Welfare*, 92nd Cong., 1st Sess., pt. 4, at 1203 (1971) [hereinafter cited as 1971 *F.L.S.A. Hearings*].

9. In 1971 it was stated that the "[c]hildren of migratory farmworkers have fewer educational opportunities and a lower educational attainment than any other group of American children." 1971 *F.L.S.A. Hearings*, *supra* note 8, at 1198.

10. *Id.* A functional illiterate is defined as "a person unable to read and understand directions." WEBSTER'S NEW INTERNATIONAL DICTIONARY 921, (unabridged) 3d ed. 1961.

11. *Powerlessness Hearings*, *supra* note 3, pt. 7-A, at 4273.

hensive about the urban environment with its busy traffic and high crime rate. Inclement weather also plays no small part in the migrants' reluctance to resettle in the north. Many of these Mexican-Americans maintain a home in Texas near their relatives and friends. The Mexican-American, with his unique cultural background, appears to be more strongly attached to the migrant stream than other ethnic groups.¹²

B. THE MIGRANT WORKER IN THE RED RIVER VALLEY

Approximately 11,000 migrants, including their families, travel to the Red River Valley each year to work in the sugar beet fields; most come from the Rio Grande Valley of Texas.¹³ The migrant workers travel with their families, the average family size being 6.5 persons.¹⁴ Their average annual income is approximately \$2,250.¹⁵ The families arrive about May 15 and the majority leave around July 25; however, some stay for the sugar beet and potato harvests until about the first of November.

Two additional sugar beet processing plants are presently under construction in North Dakota and one additional plant is being constructed in Minnesota.¹⁶ Also, the processing plants now in existence are increasing their capacities.¹⁷ These developments should bring about a substantial influx of additional migrants due to the additional number of sugar beet acres being planted.¹⁸

C. POWERLESSNESS

The migrant farm workers are among the lowest paid, least educated, worst fed, and worst housed persons in the United States.¹⁹ The migrant is relatively powerless to remedy this situation. Due to the transient nature of his being in each state, he possesses virtually no political power.²⁰ He is denied the right to organize by

12. *Powerlessness Hearings*, *supra* note 3, pt. 8-B, at 5594. A study entitled "The Ex-cepted People—The Migrant Workers in Washington State" published by the Washington State Council of Churches is reprinted in its entirety. The study encompasses many of the problem areas common to Mexican-American migrants throughout the country and Wash-ington State in particular. *Id.* at 5591.

13. See C. Maldonado, *supra* note 1.

14. These 1973 statistics were obtained from the Minnesota Migrant Council's Crookston, Minnesota office.

15. *Id.*

16. The Forum, Dec. 6, 1973, at 1, col. 5. This report entitled *Sugarbeet Growers Hear 1974 Outlook is "Bullish"*, quotes one sugar broker as stating that "if sugarbeet growers move aggressively they can capture markets now held by cane growers." *Id.* at 2, col. 5.

17. *Id.* at 1, col. 6.

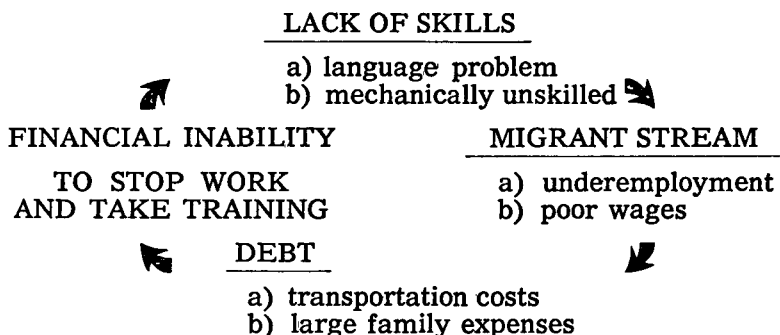
18. Red River Valley sugarbeet acreage will increase by 155,000 acres in 1974. According to a sugarbeet specialist, "growers will have to depend less on hand labor for thinning and weeding and substitute mechanical and chemical methods. . . ." The Forum, June 22, 1973, at T-5, col. 1 (Farmer's Forum). A later article in this newspaper states that sugarbeet growers are looking for an increased number of migrants and are arranging housing for them. The Forum, Dec. 24, 1973, at 3, col. 6.

19. duFresne & McDonnell, *The Migrant Labor Camps: Enclaves of Isolation In Our Midst*, 40 *FORDHAM L. REV.* 279, 280 (1971-72).

20. *Id.* at 281.

his exclusion from protective state and federal labor legislation.²¹ He has generally lacked the resources to obtain legal services to achieve change through the courts. The legislation which is enacted for his benefit is generally not properly enforced or is insufficiently geared to his needs. A simplified diagram of the migrants' situation may be helpful.

MIGRANT POVERTY CYCLE²²



There would appear to be two basic ways to break this cycle: 1) additional money; and 2) training.

There are fundamentally two approaches discernable from writers who suggest legislative remedies for these problems: 1) enact more legislation to provide more aid programs; and 2) give the migrant the power to deal with the problems himself, with minimal assistance from the government.²³ These two approaches will be discussed in light of the government's present policy, which seems to be a reluctance to enact new legislation and an unwillingness to effectively enforce the present legislation.

III. WAGES AND EMPLOYMENT CONDITIONS

A. EXISTING CONDITIONS

Migrant agricultural workers have a very low annual income, their ability to earn is impaired, and their income is sporadic and uncertain.²⁴ The migrants' wages and working conditions are imposed upon him with minimal input given to the migrant. The following section will discuss why the migrant is relatively powerless to ameliorate this situation.

21. See generally text accompanying footnotes 37 to 60.

22. Although probably somewhat oversimplified this diagram seems useful, although the cycle carries the assumption that the migrant is motivated to break out of the poverty cycle.

23. For a general outline of these two approaches as they relate to unionization see *Powerlessness Hearings*, *supra* note 3, pt. 7-A, at 4171-72.

24. *Powerlessness Hearings*, *supra* note 3, pt. 7-A, at 4046.

1. Federal Wage Control—The Sugar Beet Act

The Sugar Act of 1948²⁵ provides that wages for labor in sugar beets are to be determined by the Secretary of Agriculture on the basis of annual hearings.²⁶ As of 1973, the sugar beet growers were required to pay at least \$2.15 per hour or the piecerate.²⁷ The grower must show compliance with these pay rates before he will receive his annual sugar payments from the County Agricultural Stabilization and Conservation Service Office (A.S.C.S.).²⁸ If the migrant worker has a wage complaint, he appeals to the County A.S.C. Committee which may withhold a portion of the subsidy and pay the worker.²⁹

To determine the 1973 rates, regional annual hearings were conducted at, among other locations, Fargo, North Dakota.³⁰ Testimony was presented by representatives of both sugar beet producers and workers.³¹ The producers generally recommended no increase in wages and no changes in the program's administration. The beet workers made several recommendations:

| Recommendation | Agriculture Department's Action and Rationale |
|---|--|
| 1. Workers be paid after each operation or at least every two weeks, instead of at the end of the season. | ADOPTED Workers shall be paid after each operation. |

25. 7 U.S.C. §§ 1100-1161 (1970).

26. 7 U.S.C. § 1131(c)(1) (1970).

27. 38 Fed. Reg. 8165 (1973). The following 1973 piecework rates were provided for:

| Hand Labor Operations | Rate Per Acre |
|--|---------------|
| A. Thinning: Removing excess beets with a hoe only | \$15.50 |
| B. Hoeing: Removing weeds and excess beets with hoe only | \$20.00 |
| C. Hoe-Trimming: Removing weeds with a hoe and by hand and removing excess beets with a hoe only | \$24.00 |
| D. Weeding: Removing weeds with a hoe and by hand following either | |
| A. B. C above, E below, or following the operation specified in paragraph (c) of this section | \$13.00 |
| E. (applies only to California) | |

* * * * *

Section 862.10(c) states:

In the fields that have been completely machine-thinned and on which chemical herbicides have been applied, removing weeds with a hoe only may be employed as a first operation: *Provided*, That the applicable piecework rate shall be not less than \$13 per acre. *Id.*

Usually the two operations of (B.) Hoeing and (D.) Weeding are done by the migrant; thus in 1973 the yield was \$33.00 per acre if both operations were accomplished. Under ideal conditions, the migrant can do about 30 acres for the summer, yielding about \$930 gross for the ten weeks spent in the area. It must be noted that when the field is wet, weedy, or both, this acreage will be cut accordingly. Also many migrants are not allocated 30 acres by the grower. The U.S. Department of Agriculture has announced the following 1974 sugar beet wage rates: minimum hourly rate, \$2.30 per hour; minimum piecework rates, \$16.50 per acre for sugar beet thinning; \$21.50 for hoeing, \$25.75 for hoe-trimming; and \$14.00 for weeding. 39 Fed. Reg. 4750 (1974).

28. 7 U.S.C. § 1131(c)(1) (1970); 38 Fed. Reg. 8166 (1973).

29. 39 Fed. Reg. 4751-52 (1974).

30. 38 Fed. Reg. 8167 (1973).

31. *Id.* at 8167-69.

| Recommendation | Agriculture Department's Action and Rationale |
|---|--|
| 2. Workers should have a representative on the A.S.C. Committee for the purposes of resolving wage disputes. | <p>NOT ADOPTED</p> <p>The present system is equitable. Workers are upheld on 75 percent of their appealed cases.</p> |
| 3. Housing regulations should be adopted and enforced (by withholding sugar beet subsidy for non-compliance). | <p>NOT ADOPTED</p> <p>The U.S. Dept. of Labor will handle housing.</p> |
| 4. Contracts all must be in writing (bilingual). | <p>NOT ADOPTED</p> <p>This would be "unduly restrictive on the freedom of action of both workers and employers."</p> |
| 5. Department prohibit retaliatory acts by growers against workers for filing grievance claims. | <p>NOT ADOPTED</p> <p>a) Retaliation against a worker by a grower would be extremely difficult to substantiate.</p> <p>b) Such a provision would be equally difficult to administer in an impartial manner, and could engage administrative personnel to such an extent that other provisions of the Sugar Act could not be properly administered.</p> |
| 6. Wage rates and piecework rate should be increased by approximately 50 percent. | <p>Increase of 7.5 percent will be granted. The cost of living for migrants increased 4.1 percent from 1971 to 1972. This 7.5 percent increase from 1972 to 1973 will more than offset the cost of living for the workers.</p> |

From the above record of the 1973 hearings it seems that several very real problems are still present.³² The county A.S.C. Committee is "complaint oriented," thus it will not act unless the migrant complains. A migrant fears retaliation, such as firing, or worse, yet, being "black-listed" among all growers. As stated above, prohibition against retaliatory acts is not expressly prohibited.

There is presently a problem concerning contractual disputes. The migrant believes, in the absence of any agreement to the contrary, that when he starts a field he will do two "operations"; first the hoeing, and later the weeding—both at the piecework rate.³³

32. The 1974 Sugarbeet Hearings produced generally the same recommendations by the growers and sugar beet workers as were made during the 1973 hearings. The 1973 workers' recommendations were again not adopted. Additionally the workers' representatives requested *inter alia* that the growers be penalized for knowingly hiring illegal aliens. This was not adopted for the reason that this is a subject for legislation, namely the Immigration and Naturalization Act. The workers also requested that a determination be made to affirm the right of workers to join labor organizations and to set forth rules for recognizing bargaining representatives. This too was not adopted for the stated reason that the workers now may organize and that producers and workers should work out any rules for recognizing bargaining representatives. 39 Fed. Reg. 4754 (1974).

33. *Powerlessness Hearings*, *supra* note 3, pt. 4-A, 1350. Mr. Jonathan Chase, Professor of Law, University of Colorado, and Director, Colorado Rural Legal Services Program, pre-

There have been instances in which the grower will inform the worker that the weeding is not needed after the worker has done a very careful job on the hoeing. Of course, the worker has done a careful job on the hoeing in expectation of being able to do the later weeding with ease.³⁴ A written bilingual contract would serve to eliminate this confusion of one or two operations.

The minimum piecework rate ideally should provide only a basis for negotiation of a suitable rate between the grower and worker based on present field conditions. This is presently not the case. This minimum piecework rate usually becomes the maximum the grower will pay under any conditions. In an atmosphere of surplus labor, no savings of money or food, and little other work available, the worker is often forced to do particularly weedy fields at the minimum piecework rate.³⁵ The slow progress of the work in the weedy field may yield less than a dollar an hour but the piecework rate is all that is required for the grower to qualify for his sugar payments.³⁶

Presently, the grower is permitted to pay either on an hourly basis or at a piecework rate, as a practical matter, the latter rate is paid in the vast majority of cases.³⁷ Several suggestions have been made for improving this wage situation:³⁸ (1) allow the migrant, rather than the grower, to choose whether to work by the piecework rate or hourly rate; (2) require the grower to pay at least the hourly minimum wage; (3) require the grower to pay at least the Fair Labor Standards Act³⁹ agricultural rate of \$1.30 per hour;⁴⁰ and (4) institute a minimum wage plus an incentive bonus for additional acres completed over a designated amount.⁴¹

2. Effective Exclusion From Federal and State Laws

a) Federal Fair Labor Standards Act

Congress amended the Fair Labor Standards Act (F.L.S.A.)⁴² in 1966 to extend federal minimum wage coverage to qualified farm workers.⁴³ The minimum wage after 1969 has been set at \$1.30 per

sented to the committee a prepared statement detailing the legal problems of migrant sugar beet workers in Colorado. Many of these problems involved wage disputes. *Id.* 1349.

34. *Id.* at 1350.

35. Chase, *The Migrant Farm Worker in Colorado—The Life and the Law*, 40 U. COLO. L.R. 45, 65 (1967-68). This article is written by Professor Chase who is mentioned in the preceding footnote. Chase spent a summer working as a sugarbeet worker in Colorado.

36. *Id.*

37. *Id.* at 66.

38. Suggestions 1-3 were made by Professor Chase. *Id.* at 65-66. Suggestion 4 is the author's.

39. 29 U.S.C. §§ 201-19 (1970).

40. 29 U.S.C. 206(a)(5) (1970).

41. For example: \$2.15 per hour plus \$5.00 for each acre over one acre per day. This method would provide both an acceptable minimum wage plus an incentive to do more acres.

42. 29 U.S.C. §§ 201-19 (1970).

43. Pub. L. No. 89-601, § 203(a) (Sept. 23, 1966), 80 Stat. 833, as codified 29 U.S.C. 213(a)(6) (1970).

hour for farm workers.⁴⁴ To be covered under the F.L.S.A., the migrant's employer must have used more than 500 man-days of labor in any quarter in the preceding year.⁴⁵ Consequently, only about two per cent of all farms in this country are large enough to be affected by this minimum wage requirement.⁴⁶ In addition, the Department of Labor, which enforces this section, is "complaint oriented" and the migrant seldom has enough information to complain. One author has concluded that given the Department of Labor's present attitude, it would be better not to have agricultural workers covered under the F.L.S.A. than to have coverage which is meaningless⁴⁷.

b) *National Labor Relations Act*

Agricultural workers are denied collective bargaining protection by their exclusion from the National Labor Relations Act (N.L.R.A.).⁴⁸ Thus they can be fired and blacklisted for union activity.⁴⁹ Any organization thus far achieved by agricultural workers has been largely through economic measures rather than by N.L.R.A. protection.⁵⁰

c) *State Legislation*

1) *Labor Relations Legislation*

Agricultural employees are excluded from the provisions of the "Minnesota Labor Relations Act"⁵¹ and the "North Dakota Labor-Management Relations Act."⁵² These two labor relations acts grant covered employees the right to form, join, or assist a labor organization and to bargain collectively. By their exclusion, migrant agricultural workers are denied the right to organize and bargain collectively.

2) *Minimum Wage Laws*

North Dakota law provides that the Commissioner of Labor may establish minimum wage standards.⁵³ It does not appear that any minimum wage standard for agricultural workers has yet been es-

44. 29 U.S.C. 206(a)(5) (1970).

45. 29 U.S.C. 213(a)(6) (1970).

46. 1971 *F.L.S.A. Hearings*, *supra* note 8, at 1221-22.

47. Chase, *supra* note 31, at 70.

48. National Labor Relations Act § 2(3), 29 U.S.C. 152(3) (1970). Section 7 of the Act states that: "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing. . . ." However Section 2(3) of the Act states that: "The term 'employee' . . . shall not include any individual employed as an agricultural laborer. . . ."

49. It would constitute an "unfair labor practice" under Section 8(a)(1),(3) for an employer to fire or blacklist an employee for union activity. However, since migrant agricultural workers are not included as employees in the act, they are not protected from such actions as blacklisting and dismissal for union activities.

50. GAO, *supra* note 6, at 19.

51. MINN. STAT. ANN. § 179.01(4) (1966).

52. N.D. CENT. CODE § 34-12-01(3) (1960).

53. N.D. CENT. CODE § 34-06-03(3) (1960).

tablished.⁵⁴

The recently enacted Minnesota Fair Labor Standards Act⁵⁵ provides generally for a minimum wage of \$1.80 an hour for workers over the age of 18.⁵⁶ No minimum wage is set for agricultural workers under 18 years of age.⁵⁷ As this relates to migrant workers, it appears that the grower must pay at least the minimum wage if: 1) he employs workers who are 18 years old or older for a combined total of more than 80 weeks a year; or 2) he utilizes more than four 18 year old or older workers on any given day.⁵⁸ As written, this minimum wage seems to apply even if the piece rate is agreed upon between the worker and grower.⁵⁹

3) Unemployment Legislation

Agricultural laborers are excluded from unemployment coverage in North Dakota and Minnesota.⁶⁰ Even if they were not excluded *per se*, the migrant agricultural worker probably could not meet the wage and employment requirements for the requisite base period in Minnesota.⁶¹ Since the migrant is often forced to remain idle for long periods of time, unemployment compensation would be desirable.

4) Workmen's Compensation

The accident rate among agricultural workers is three times that of the average occupation.⁶² Furthermore, a disabling injury is likely to have a greater economic impact on migrant agricultural workers than on people in other occupations.⁶³ The arduous stooping and bending inherent in the migrants' work necessitates a strong body unimpaired by a lingering disability. Additionally, migrants seldom carry hospital and surgical insurance as do people with higher incomes.⁶⁴ Yet, agricultural workers are excluded from coverage of the North Dakota workmen's compensation law.⁶⁵ The Minnesota Legislature recently extended coverage to farm laborers

54. 2 CCH LAB. L. REP., N.D. ¶ 44,055 at 57, 127-4 (1971). This publication lists no "Minimum Wage Order" for agricultural employees in North Dakota. The absence of such a minimum wage was confirmed by a telephone conversation with the Grand Forks branch of the North Dakota Employment Security Bureau.

55. MINN. STAT. ANN. § 177.21-.35 (Supp. 1974).

56. *Id.* at § 177.24.

57. *Id.* at § 177.23(7)(2).

58. *Id.* at § 177.23(7)(1).

59. *Id.* at § 177.24. "[E]very employer shall pay to each of his employees wages at a rate of not less than \$1.80 an hour." *Id.* No provisions are mentioned that the \$1.80 rate is applicable only to workers which are employed at an hourly rate.

60. N.D. CENT. CODE § 52-01-01(15)(a) (1960); MINN. STAT. ANN. § 268-04(12)(13)(a) (Supp. 1974).

61. MINN. STAT. ANN. § 268.07(2) (Supp. 1974).

62. *Powerlessness Hearings*, *supra* note 3, pt. 8-A, at 4984.

63. *Id.* pt. 4-B, at 1770.

64. *Id.*

65. N.D. CENT. CODE § 65-01-02(4)(a) (1960).

employed in a farm operation which had paid \$2,000 or more in cash wages during the preceding calendar year.⁶⁶

B. CAUSES OF LOW INCOME

1. Underemployment

The migrant worker is unskilled, and it is increasingly evident that skill level is an important ingredient in determining wages.⁶⁷ The rapid rate of mechanization in the sugar beet industry has made it more apparent that migrants must either find new jobs in agriculture or shift to a nonfarm occupation. However, mechanization has not yet totally eliminated the need for migratory farm laborers. Instead, it has caused intense "underemployment," because there is less work to do. The migrant averaged only 116 days of work in 1969.⁶⁸ Daily and hourly wage rates are deceptive when dealing with migrant labor. Even a relatively high hourly wage rate will not bring the migrant above the poverty level because of the paucity of working time.⁶⁹

2. Oversupply of Laborers

An employer-employee negotiated increase in migrant workers' wages is unlikely due to the oversupply of laborers. Although the Bracero Program, which allowed Mexican labor to freely enter and work in the United States, was eliminated in 1964,⁷⁰ a "flood" of illegal aliens continues to enter. These illegals continue to depress wages and working conditions for the American migrants.⁷¹ Senator Walter Mondale of Minnesota has labeled this "commuter problem" as a situation which is "creating the biggest source of new poverty in America today."⁷² The Immigration and Naturalization Service of the Department of Justice is empowered to restrict this illegal immigration, but they show little interest in the problem.⁷³ With this oversupply of labor, the migrant is put in a very unequal bar-

66. See MINN. STAT. ANN. §§ 176.011(11)(a), 176.04(1) (Supp. 1974).

67. *Powerlessness Hearings*, *supra* note 3, pt. 7-A, at 4441.

68. *Id.* at 4273.

69. *Id.* pt. 8-B, at 5602. The Washington State study cited in note 12 observed that the migrant works so few days in a year that his hourly wage would have to be \$5.40 per hour to raise the migrants' income to the Washington State average (1965).

70. Act of Dec. 13, 1963, Pub. L. No. 88-203, 77 Stat. 363, the termination of the program was set for December 31, 1964.

71. A good description of the effects of illegal entries is printed in the *Powerlessness Hearings*, *supra* note 3, pt. 7-B, at 4817-18. These effects include depressed wages, unemployment, forced migration, and frustration of attempts to collectively bargain.

72. *Powerlessness Hearings*, *supra* note 3, pt. 7-A, at 4207.

73. See generally Greene, *Immigration Law and Rural Poverty—The Problems of The Illegal Entrant*, 1969 DUKE L. REV. 475; W. GELLHORN & C. BYSE, *ADMINISTRATIVE LAW, CASES AND COMMENTS* 84 (5th ed. 1970). Gellhorn and Byse state that strong pressure from southwestern and western agricultural areas for cheap labor led to diminished appropriations for the Border Patrol of the Immigration and Naturalization Service; thus as a consequence, "wetback" labor from Mexico continued to flow despite provisions of the immigration statutes.

gaining position. He is often given the alternative—if you don't like the wages or working conditions you can quit, other help is available.⁷⁴

C. IMPROVEMENTS

1. *Eliminate Foreign Competition*

The "commuter problem" was repeatedly discussed during the Senate Migrant Powerlessness Hearings in 1969-70.⁷⁵ The Immigration and Naturalization Service has been encouraged to restrict the flow of illegal aliens and legislation has been suggested that would make the employing of an illegal alien a criminal act. However, even if the foreign competition is eliminated, there will still not be a one-to-one substitution for the Mexican-American migrant because capital (mechanization) will largely replace these workers.⁷⁶ The machines used to replace migrants in the Red River Valley are generally not operated by retrained migrants, but rather by the grower's family or local workers.⁷⁷

2. *Unionization*

The alternative of unionization has been repeatedly suggested to alleviate the migrants' "powerlessness."⁷⁸ The inclusion of agricultural workers under the protection of the National Labor Relations Act would aid the goal of unionization.⁷⁹ Agribusiness should be recognized as an industry and it should not need continued preferential treatment; its employees should have the right to collectively bargain.⁸⁰ Unionization, with its resulting increase in income, may have a spinoff affect of reducing government programs that may cost a lot, but offer little.⁸¹ Senator Mondale seems to agree with the desirability of unionization to remedy the migrants' powerlessness. He states that the migrant has suffered an "overdose of malignant paternalism" and "bureaucratic insensitivities."⁸² Of course, unionization would only speed the development of new and improved farming techniques such as herbicides and better beet thinners.⁸³

74. *Powerlessness Hearings*, *supra* note 3, pt. 3-B, at 934. This over-supply of labor tends to make employers less sensitive to the workers. Statement of Rev. Edgar Krueger of the Lower Rio Grande Valley, Texas, concerning conditions in that area. *Id.* at 935.

75. *Id.* pts. 5-A, 5-B. The "Border Commuter Labor Problem" was the subject of two days of testimony during the *Powerlessness Hearings*.

76. *Id.* pt. 7-A, at 4451.

77. Telephone interview with a North Dakota sugar beet grower farming north of Grand Forks, North Dakota, November 29, 1973 [hereinafter referred to as Interview with Area Sugar Beet Grower].

78. *Powerlessness Hearings*, *supra* note 3, pt. 7-A, at 4170.

79. Of course, coverage of agricultural workers under the N.L.R.A. would prevent secondary boycotts and other practices presently allowable since agricultural employees are not covered. See National Labor Relations Act § 8(b), 29 U.S.C. 158(b) (1970) which lists unfair labor practices for an included labor organization.

80. *Powerlessness Hearings*, *supra* note 3, pt. 7-B, at 4819.

81. *Id.* pt. 7-A, at 4170.

82. *Id.* pt. 7-B, at 4561-62.

83. Electronic beet thinning is gaining popularity in this area replacing hand labor. About

This development will eliminate the jobs for migrants and will dry up the migrant stream to this area. This drying up of the migrant stream with its adverse living conditions may in itself be a proper goal.⁸⁴

3. *Employment Coordination and Training*

As mechanization replaces the migrant, a plan of action must be formulated to keep the migrant from becoming unemployed and swelling the welfare rolls. The mechanization of the cotton harvest, which resulted in a tremendous sweep of rural low income people to the cities, presents a vivid example of the consequences of the lack of planning for manpower problems.⁸⁵ An effective plan of action must be formulated to provide: 1) a more even sequence of seasonal agricultural jobs; and 2) retraining and resettling of migrants to provide non-agricultural jobs. Past efforts at resettlement and retraining have been largely ineffective because the government administrators have thus far failed to recognize the migrants' situation as depicted by the Migrant Poverty Cycle.⁸⁶

To be effective, the migrant retraining and resettling program must concentrate on three important elements. First, to be resettled and retrained, the migrant needs more money. The migrant is in debt from being in the migrant stream. His large family needs food and a large house. A lack of adequate low income housing has been indicated as the biggest problem in resettlement.⁸⁷ An adequate subsistence allowance for the resettled migrant is essential. Secondly, the migrant resettlement and training program must be flexible. Migrants usually do not operate on time schedules. Slots must be left open in training programs for late arrivals.⁸⁸ Thirdly, the program will be only as good as the people who administer it. These people must be "people oriented" and not merely statistic compilers. Some type of "on-call" counseling should be available to give assistance information regarding such subjects as food buying, transportation, and referral to other agencies. Efforts should be made to aid the resettler to contact any other resettled migrants in the area.

20 per cent of the beets were electronically thinned last year. The Forum, June 22, 1973, at T-5, col. 2 (Farmer's Forum).

84. *Powerlessness Hearings*, *supra* note 3, pt. 7-B, at 4562. Of course, alternative occupations must be found. Occupational training in southern Texas would be the most logical means of providing these skills.

85. *Id.* at 4974.

86. See diagram in text accompanying note 22.

87. *Powerlessness Hearings*, *supra* note 3, pt. 7-B, at 4533.

88. One resettled migrant attending vocational training in East Grand Forks returned to Minnesota too late to qualify for a Department of Labor Program. Initially he is continuing his training on a grant from the Minnesota Migrant Council.

IV. LIVING CONDITIONS

A. HOUSING⁸⁹

The migrant reaches the Red River Valley usually after a long trip involving sleeping in cars, pickups, and trucks. The housing awaiting him at his arrival is often not ready for his occupancy. Water cisterns are occasionally filled without cleaning out the winter-long accumulation of general debris such as dirt and rust scale. Adequate heating is often not furnished for the cool spring weather. It seems clear that substandard migrant housing contributes to the poor health of the migrant and his family often including very young children.⁹⁰ No effective enforcement has been provided for existing migrant housing guidelines in Minnesota and North Dakota. The imposition of a strict federal migrant housing code remains a distinct possibility for both of these states.

1. Occupational Safety and Health Act Standards

The Occupational Safety and Health Act of 1970 (OSHA)⁹¹ directs the United States Secretary of Labor to adopt safety and health standards for all nongovernmental employers and employees in business "affecting interstate commerce. . . ."⁹² This definition of businesses includes that of agribusiness.⁹³ Rather stringent "Temporary Labor Camp" standards have been formulated by the United States Department of Labor.⁹⁴ The states, however, are given the option of enforcing their own equivalent standards in lieu of federal enforcement.⁹⁵ The OSHA standards are enforced by federal inspectors who conduct inspections and issue citations for violations⁹⁶ which must be corrected within a specified time.⁹⁷ One source states that overall during 1971, there were 14,452 OSHA inspections accounting for 35,839 citations and proposed fines of over \$700,000.⁹⁸

2. State Housing Codes

According to a North Dakota Health Department official, North

89. It should be noted that most migrants in the Red River Valley are housed by individual growers on their own property.

90. *Powerlessness Hearings*, *supra* note 3, pt. 3-B, at 5613.

91. 29 U.S.C. §§ 651-78 (1970), *as amended* (Supp. II, 1972).

92. *Id.* at § 651(3).

93. Frazier, *OSHA and the Farmer: An Analysis and Critique*, 595 INS. L.J. 439, 440 (1972).

94. 29 C.F.R. 1910.142 (1973). Some of the more strict sections are: § (a)(2), "The principal camp area in which food is prepared and served and where sleeping quarters are located shall be at least 500 feet from any area in which livestock is kept."; § (b)(2), "Each room used for sleeping purposes shall contain at [l]east 50 square feet of floor space for each occupant."; and § (d)(3), "No privy shall be closer than 100 feet to any sleeping room, dining room, lunch area, or kitchen."

95. 29 U.S.C. § 667(c)(2) (1970).

96. 29 C.F.R. 1903.14(a) (1973) provides for issuance to the employer of either a citation or notice of *de minimus* violations which have no direct or immediate relationship to safety or health.

97. 29 C.F.R. 1903.14(b) (1973).

98. Frazier, *supra* note 84, at 440.

Dakota formulated strictly voluntary migrant housing guidelines in the early 1960's, and these guidelines have not been enforced by any systematic inspection program.⁹⁹ The North Dakota plan for the development and enforcement of state occupational safety and health standards was rejected by the North Dakota State Legislature.¹⁰⁰ A migrant housing code is presently being formulated by a "subcommittee" of the North Dakota Governor's Migratory Farm Labor Committee to aid growers in housing plans and hopefully to forestall imposition of federal OSHA migrant housing guidelines and federal enforcement.¹⁰¹ It is presently unclear as to which guidelines will be enforced in the summer. An early resolution of this matter is essential as migrant housing should be inspected in the early spring when the migrants first arrive.

The Minnesota State Board of Health adopted a set of standards entitled Migrant Labor Camp Regulations, on January 14, 1969.¹⁰² These regulations require the State Board of Health to make an annual inspection of each migrant labor camp; the board may revoke the permit to operate the camp if violations are not corrected within a reasonable time. However, no funds were appropriated for these inspections during the summer of 1973. The Minnesota legislature enacted legislation to provide for state enforcement of occupational safety and health standards at least as effective in providing safe and healthful places of employment as those promulgated by the United States Secretary of Labor.¹⁰³ At this time it is unclear whether the Minnesota Migrant Labor Camp Regulations, MHD 163, will be enforced by the Minnesota Health Department or whether the Minnesota Commissioner of Labor and Industry will enforce migrant housing standards equivalent to the federal OSHA standards.¹⁰⁴ This ambiguity should be resolved in time for an effective inspection and enforcement program for the summer of 1974.

99. Telephone interview with Mr. K. W. Tardif, Chief of the Environmental Sanitation and Food Protection Division of the North Dakota Department of Health, Bismarck, North Dakota, January 18, 1973. See also Report prepared by M. J. Peterson, North Dakota State Coordinator Migrant Programs, to supplement evaluation reports submitted by directors of six centers, MIGRANT CHILDREN—TARGET POPULATION REPORT at 5. The advisory committee from Hillsboro, North Dakota is quoted as making the following statement: "[R]eferences were made concerning the housing standards set up by the State of North Dakota—the general feeling was that they were adequate enough but that they were not properly enforced. This is not a topic directly related to educational facilities, but it is still of major concern because of the relationship of the home and the school."

100. See N.D. JOUR. H.R., 43rd Sess. 1146 (1973). S.B. 2115 Indefinitely Postponed.

101. The Chairman of the North Dakota Governor's Migratory Farm Labor Committee is quoted as stating that one one grower in the valley could meet the OSHA migrant housing guidelines. *The Forum*, Dec. 24, 1973, at 3, col. 7, 8.

102. Minn. State Board of Health Regulations on Migrant Labor Camps, M.H.D. 163 (1969).

103. MINN. STAT. ANN. §§ 132.65-182.674 (Supp. 1974).

104. Telephone interview with 'Pete' Moreno, Special Field Representative for the Minnesota Office of Economic Opportunity (State Migrant Program Coordinator), St. Paul, Minnesota, Jan. 25, 1974.

3. United States Department of Labor Housing Standards¹⁰⁵

Department of Labor Housing Standards are not enforced unless the grower utilizes the Department of Labor to recruit interstate migrants.¹⁰⁶ Since most migrants in the Red River Valley are privately recruited by the sugar beet company, these housing standards have not been enforced in this area.

B. HEALTH CARE

The life expectancy of the migrant is 20 years less than the average American; the infant and maternal mortality rate is 125 per cent higher than the national average, and death from influenza, pneumonia, and tuberculosis is 200 per cent or greater than the national norm.¹⁰⁷ In 1967, the average health-care expenditure for the entire national population was approximately \$200. The per capita average for the migrant was \$7.20.¹⁰⁸ The migrant desperately needs comprehensive health services.

The Hospital Survey and Construction Act,¹⁰⁹ better known as the Hill-Burton Act, was enacted in 1946 to aid states in the construction of hospitals to furnish "adequate hospital, clinic, and similar services to all their people."¹¹⁰ As a condition for federal aid under Hill-Burton funding, the hospital must provide a "reasonable" amount of care to indigents.¹¹¹ Migrants should be informed of the program and it has been suggested that negotiations be conducted with each hospital to encourage the facilities to adopt a procedure whereby admission personnel offer the care required by Hill-Burton without requiring indigent demand.¹¹² As a last resort, one author suggests that a suit may be filed against any hospital which rejects indigents without first having fulfilled their obligation to provide a "reasonable volume of services to persons unable to pay."¹¹³

C. FOOD STAMPS

The cost of food is probably the largest single regular expense the migrant must pay while he is employed in this area. To help defray the cost of food, many migrants apply for food stamp assistance in their county of residence.¹¹⁴ In order to obtain food stamps

105. 20 C.F.R. 620 (1973).

106. 20 C.F.R. 620.1(a),(b) (1973).

107. *Powerlessness Hearings*, *supra* note 3, pt. 8-A, at 5341.

108. *Id.* pt. 8-B, at 5609.

109. 42 U.S.C. §§ 291-291o (1970).

110. *Id.* at § 291(a).

111. *Id.* at § 291(c)(e)(2) (1970), 42 C.F.R. § 53.111(b)(6,7) (1973).

112. T. EWALD, COURT ACTION FOR MIGRANTS 31 (1972).

113. *Id.*

114. Food Coupons, (food stamps) are purchased at a discount which depends upon the income of the recipient. For example a recipient may be required to pay \$115 (purchase requirement) to receive a monthly coupon allotment of \$160 in food stamps. N.D. Social

the migrant must first be certified.¹¹⁵ If migrants arrive "under contract with beet growers," he is certified by the counties prorating "the anticipated income over the anticipated length of employment, after having added one month. . . ."¹¹⁶ If the migrant applies for food stamps before he starts work or shortly thereafter, he may have no actual income but his anticipated income will be too much for him to qualify for assistance. If the migrant possesses no present income or sufficient resources, he should be certified to receive food stamps, at least until he receives actual income sufficient to buy food.¹¹⁷ The migrant should be certified as a "Zero Purchase Household"¹¹⁸ if he has very low present income. This would enable the migrant to receive food stamps free until he has accrued enough wages to buy food on his own.

V. REMEDIES

A. PRESENT INDIVIDUAL REMEDIES

The migrant probably "isn't aware that his rights are being violated half of the time, the other half, when it finally dawns on him that he has been given the screw, he is unaware of the legal resources" that are available to him.¹¹⁹ The migrant needs an advocate; government services are still "complaint oriented," benefit programs must be applied for, and denials of rights must be challenged. In the future, a union may provide this advocate, but presently legal services organizations should take an active role in the migrants' cause.

B. BROADENED SOLUTIONS

There are also other extensive legal problems often regarded as "social" or "economic" or "political" for which no satisfactory legal solutions have yet been developed.¹²⁰ Two basic courses of action have been proposed to remedy the migrants' plight. One thrust is

Service Manual, ch. 350, Food Stamp Program, (Oct. 1972). See § 12, para. 1 for purchase requirement chart.

115. It is the author's experience that generally about 50 per cent of the migrants that apply are rejected mainly for "excessive income". This is startling considering the fact that the average annual income for a family of 6.5 was \$2,250 in the Red River Valley. Space does not permit a full discussion of this problem.

116. N.D. Social Service Manual, ch. 350, § 9 para. 6(d)(1) at 34. Similar provisions are contained in the manual employed by Minnesota food stamp personnel.

117. This was the basis of a July 3, 1973 hearing at Grafton (Walsh County), North Dakota. The argument for certification at least until the migrant commenced work under his contract was rejected by the Social Service Board of North Dakota on August 16, 1973.

118. N.D. Social Service Manual, ch. 350, § 10, para. 4. This section provides *inter alia* that a preliminary certification pending verification, for example certification for 30 days without verification of eligibility facts, may be applied to those households that it appears will be eligible for participation.

119. *Hearings before House Committee on Title III of H.R. 5010 (Migrant Manpower Programs)*, 92nd Cong., 2nd Sess. 45 (1972).

120. *Powerlessness Hearings*, *supra* note 8, pt. 4-B at 1815.

through the legislative branch of government; the other through the courts.

1. Legislative Remedies Approach

Congress should amend the National Labor Relations Act to include agricultural labor.¹²¹ Two basic reasons have been given for the exclusion of agricultural workers from the N.L.R.A. in 1938: 1) harmonious labor relations exist in agriculture; and 2) extreme hardship would result because of the perishability of the crop.¹²² This rationale of hardship to the farmer is still given today. In order to pass an amendment to include agricultural workers under the collective bargaining protection of the N.L.R.A. this rationale must be refuted. The history and experience of unionization in other closely related fields should dispel the fears of Congress. The food processing industry has been unionized for over 30 years,¹²³ and the dairy industry is largely unionized in many locales.¹²⁴ Either of these unions could "cut off" the food supply and ruin the farmer. Yet they have the right to organize, therefore so should the agricultural worker.¹²⁵

In 1966, then Secretary of Labor, Willard Wirtz, stated that the exclusion of agricultural labor was "an anachronistic carry over from the period of disproportionate political influence by rural voters." He predicted that "national acceptance of the principal of one-man, one-vote," would be an end to the exclusion.¹²⁶ In 1971, one commentator stated that public opinion seemed to favor inclusion and that Congress might soon include farm workers under the N.L.R.A.¹²⁷ Also, it has frequently been suggested that states should enact legislation to include agricultural workers under their own state labor relations acts, unemployment insurance, and workmen's compensation law.¹²⁸

2. Court Action Approach

Generally possessing little political influence and lacking the requisite weight to sway administrative bodies, the courts have been

121. Note, *Labor Law—The Migrant Farm Worker—Aid through Legislation*, 22 MERCER L. REV. 797, 801 (1971); duFresne & McDonnell, *supra* note 19, at 282; Givens, *Legal Disadvantages of Migratory Workers*, 16 LAB. L.J. 584, 592 (1965); Morris, *Agricultural Labor and National Legislation*, 54 CALIF. L. REV. 1939, 1977-89 (1966); Chase, *supra* note 31, at 77.

122. Morris, *Agricultural Labor and National Labor Legislation*, 54 CALIF. L. REV. 1939, 1968-72 (1966). The author gives an excellent history and analysis of the exclusion of agricultural workers from the National Labor Relations Act.

123. *Id.* at 1985.

124. *Id.* at 1986.

125. *See id.* at 1985-87.

126. *Id.* at 1983.

127. Note, *Labor Law—The Migrant Farm Worker—Aid Through Legislation*, 22 MERCER L. REV. 797, 801 (1971).

128. *E.g.* Chase, *supra* note 31, at 76-78.

suggested as the most "enlightened" branch of government from which to seek a remedy for the migrants' problems.

a. *Constitutionality of the N.L.R.A. Exclusion*

"[I]t was generally recognized rather early that the Fifth amendment due process clause was a limitation on the power of Congress to pass discriminatory legislation."¹²⁹ Also state legislation is subject to the equal protection clause of the 14th amendment. The N.L.R.A. creates two classes of employees:¹³⁰ 1) farm workers, domestic servants, persons working for parent or spouse; and 2) all other employees. The classification created by the act must be "reasonable in light of its purpose."¹³¹ One commentator has determined that when one looks to the legislative history of the N.L.R.A., the only justification for the exclusion of agricultural workers was that it was "deemed wise for administrative reasons."¹³² The greatest administrative problems would seem to arise when one employer employs one or two employees. Congress, however, included employees in such a classification, but excluded the class of agricultural workers who would create less of an administrative hardship.¹³³ This writer concludes that the only stated reason given to support the classification created by Congress has no merit and that the exclusion of the class of agricultural workers for "administrative reasons" cannot be justified.¹³⁴

The author also suggested that the agricultural worker exclusion from the N.L.R.A. is a violation of the Fifth Amendment, even when non-legislative history rationale is used to justify the exclusion.¹³⁵ The Fifth Amendment also includes an equal protection requirement that federal legislation must not discriminate on an unjustifiable, arbitrary, or unreasonable basis.¹³⁶ The reasons, hardship to the farmer and no need for organization, are not reasonably related to the classifications of employees. Both farm workers and other employees, such as truckers and food processors, are capable of creating an equal amount of hardship for the farmer and the need to organize is certainly at least equal in both classes. The equal protection requirement of the Fifth Amendment provides that those

129. Note, *The Constitutionality of the N.L.R.A. Farm Labor Exemption*, 19 HASTINGS L.J. 384, 387 (1968) citing *Currin v. Wallace*, 306 U.S. 1, 14 (1939).

130. 29 U.S.C. § 152(3) (1970).

131. Note, *supra* note 129 at 390 citing *Carrington v. Rash*, 380 U.S. 89, 93 (1965) quoting *McLaughlin v. Florida*, 379 U.S. 184, 190 (1964).

132. Note, *supra* note 129 at 391-92.

133. *Id.* at 392.

134. *Id.* See also *Frontiero v. Richardson*, 393 S.Ct. 1764, 1772 (1973) in which the Court stated that "With respect to strict judicial scrutiny of a legislative classification, 'administrative convenience' is not a shibboleth, the mere recitation of which dictates constitutionality."

135. See Note, *supra* note 129 at 392-94.

136. *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954); *Detroit Bank v. United States*, 317 U.S. 329, 338 (1943) (dictum); *Currin v. Wallace*, 306 U.S. 1, 14 (1939).

similarly situated be treated alike.¹³⁷ Food processors, warehousemen, and truckers are arguably in a similar classification with agricultural workers, as both can create hardship by allowing the perishable crop to spoil during a work stoppage.¹³⁸ The writer contends that a classification which discriminates against the agricultural worker, but not against those in a similar position, is unreasonable, irrational, and arbitrary, and therefore unconstitutional.¹³⁹

b. *Intended Beneficiary Theory*

Farmworkers are politically impotent "because of lack of organization or unionization."¹⁴⁰ As a consequence, they do not possess an effective lobby in state capitals or in Congress. Additionally, the legislation which is enacted only seems to "peck away" at the problems. It has been suggested that the courts are a better focus for remedies as they are least controlled by lobby groups.¹⁴¹

One commentator points to a sequence of Acts which established the land grant college system,¹⁴² agricultural experiment stations,¹⁴³ and cooperative extension service,¹⁴⁴ and states that these acts show a general intent to improve the quality of the rural home and rural life.¹⁴⁵ The author states that the United States Department of Agriculture and the agricultural colleges administer the program of research and education to improve rural life.¹⁴⁶ It has been estimated that 95 per cent of all research money in the United States Department of Agriculture and its land grant affiliates is technologically oriented.¹⁴⁷ The technological advances resulting from this research have created hardship for the migrant by reducing the quantity of work available and in some cases causing illness and death due to the use of pesticides.¹⁴⁸ It would seem that the objective of improving the quality of rural life would be directly applicable to the migrant whose life has been so drastically altered by this technology. The migrant would therefore seem to be an "intended bene-

137. *Louisville Gas Co. v. Coleman*, 277 U.S. 32, 37 (1928); quoting *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920).

138. Note, *supra* note 129 at 393.

139. *Id.* at 394. See also *Gallegos v. Glaser Crandell Co.*, 388 Mich. 654; 202 N.W.2d 786 (1972) which held that the Michigan Workmen's Act, which effectively excluded migrant agricultural workers, violated the seasonal workers' rights to equal protection provided for in the U.S. Constitution and the Michigan Constitution.

140. Clancey, January & Liddle, *Land Grant Colleges, Agribusiness and Migrant Farm Workers*, 2 Tex. So. U.L. Rev. 236, 271 (1973).

141. *Id.*

142. Morrill Act of 1862, 7 U.S.C. 301-31 (1970), as amended (Supp. II, 1972).

143. Hatch Act of 1887, 7 U.S.C. § 361 (1970), as amended (Supp. II, 1972).

144. Smith-Lever Act of 1914, 7 U.S.C. §§ 341-49 (1970), as amended (Supp. II, 1972).

145. Clancey, *supra* note 140, at 272-75.

146. *Id.*

147. *Powerlessness Hearings*, *supra* note 3, pt. 7-B, at 4550.

148. An article entitled "Public Health Problems Are Created by Pesticides" relates that an average of two deaths from pesticides have occurred annually in California and in 1963 there were eight accidental deaths from pesticides in one of the 67 counties in Florida. *Id.* pt. 6-A, at 3074.

ficiary" under these Acts.¹⁴⁹

An injunction against federal and state officials for "improperly" expending funds has been suggested as a possible court remedy to get more money channeled to aid the migrant.¹⁵⁰ It has also been suggested that fundamental rights of the migrant, "such as those to life, a healthful environment and a minimum level of subsistence" might be protected by the Ninth amendment¹⁵¹ to the United States Constitution.¹⁵² The government, by its financing of research, is indeed taking the means of livelihood, healthful environment, and a minimum level of existence from the migrant.¹⁵³ However, the prospects of a court recognizing these values as being protected by the "intended beneficiary" theory or by the Ninth amendment is "doubtful."¹⁵⁴

c. Implied Civil Remedies

The Wagner-Peyser Act¹⁵⁵ established the United States Employment Service which funds the state employment services.¹⁵⁶ Before these state agencies can recruit migrants through interstate channels, the agency must determine that the grower will have adequate housing and will not pay "less than the prevailing wages in the area."¹⁵⁷ This Act provides that federal funds may be terminated if the state agencies do not carry out the procedures for checking growers and housing conditions before recruiting interstate migrants.¹⁵⁸ An implied remedy for an injunction and damages against a State Employment Service has been recognized when the State Employment Service recruits migrant workers for employers whose pay scales and working conditions are in violation of the provisions of the Act and the regulations promulgated pursuant to the Act.¹⁵⁹

The Immigration and Naturalization Act of 1952 provides that

149. Clancey, *supra* note 140, at 280.

150. *Id.* at 275-76. That such an injunction would be granted is conceded as being far from certain.

151. "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." U.S. Const. amend. IX.

152. Clancey, *supra* note 140, at 277-80. The article cites Goldberg's concurring opinion, joined by Justices Warren and Brennan in *Griswold v. State of Connecticut*, 381 U.S. 479, 488 (1965) as stating that:

The language and history of the Ninth Amendment reveal that the framers of the Constitution believed that there are additional fundamental rights, protected from governmental infringement, which exist alongside those fundamental rights specifically mentioned in the first eight constitutional amendments.

In *Griswold* the United States Supreme Court reversed the criminal conviction of two persons who had been found guilty of violating a state statute prohibiting the use of contraceptive devices.

153. *Id.* at 278-80.

154. *Id.* at 275-76, 280.

155. Wagner-Peyser National Employment System Act, 29 U.S.C. § 49 (1970).

156. *Id.* at 49(b). This section makes provisions for the financing of state agencies to work with the U.S. Employment Service.

157. 20 C.F.R. 602.9(a)(f) (1973).

158. 29 U.S.C. § 49(h) (1970).

159. *Gomez v. Florida State Employment Serv.*, 417 F.2d 569 (5th Cir. 1969).

entrance of aliens into the United States for labor is to be restricted.¹⁶⁰ It is clear that the Act's intent is to protect United States workers from job competition of alien workers. The statute provides for criminal sanctions against anyone bringing in or harboring illegal aliens. However, "employment" of illegal aliens is not subject to such a penalty. So far, efforts to establish an implied civil remedy by domestic workers against employers of illegal aliens have been unsuccessful.¹⁶¹

3. Legislative Relief v. Court Action

In a recent case, *San Antonio Independent School District v. Rodriguez*,¹⁶² the United States Supreme Court applied the equal protection rational relationship test¹⁶³ requiring only that the legislation be shown to bear some rational relationship to a legitimate purpose.¹⁶⁴ The Court upheld the Texas system of public school financing although it did result in substantial interdistrict disparities in per-pupil expenditures. The financing system involved was a property tax by each school district to supplement funds received from the state. The rationale of the Court was that the legislatively determined financing system rationally furthered the legitimate state purpose of providing a basic education while permitting and encouraging local participation and control of the public schools. Under the rational relationship test, as outlined in *Rodriguez*, the Burger Court would likely hold that the exclusion of migrant agricultural workers from legislation is rationally related to the legislative purpose of preventing administrative and economic hardship to the farmer.

There appears to be more hope for legislative action to eliminate the exclusion from the labor relations act and other social and economic legislation than from the courts. The migrant is beginning to have more of a voice from existing labor organizations, state migrant councils, and the Legal Services Offices which are funded by the Office of Economic Opportunity. Agriculture appears to have entered a new era of prosperity which should make it more amenable to gains by migrant agricultural workers. Inflation in the costs of the basic necessities of the migrants, such as gasoline and food, will cause increased hardship for the migrant worker and his family,

160. 8 U.S.C. §§ 1101-1503 (1970), as amended (Supp. II, 1972).

161. *Chavez v. Freshpict Foods, Inc.*, No. C-2486 (D. Colo., Aug. 1970); *National Clearinghouse Review*, vol. V, No. 1, p. 50 (May 1971). The United States District Court for the District of Colorado dismissed a complaint by domestic farmworkers against the employers of allegedly illegal aliens on the grounds that 8 U.S.C. § 1182(a)(14) (1970) did not imply a private remedy, but rather was only a Congressional directive to federal officials and agencies charged with the administration and enforcement of the Act.

162. 41 U.S.L.W. 4407 (1973).

163. *Id.* at 4419.

164. In this case the Court is referring to state laws but the Fifth Amendment Due Process clause of the U.S. Constitution has incorporated equal protection rights to apply to national legislation. *E.g.*, *Frontiero v. Richardson*, 93 S.Ct. 1764 (1973).

and accelerated mechanization will cause greater unemployment. Hopefully, the presence of these factors will be voiced by the various migrant groups and will tend to facilitate the enactment of legislation favorable to the migrant agricultural worker.

VI. CONCLUSION

The migrant worker should be given the opportunity to earn a decent wage, obtain vocational and educational assistance, and receive a "fair shake" in dealing with governmental agencies. The restrictions on the migrants' right to organize and unionize should be removed so that the migrant may be able to obtain the requisite power to deal with his employer and exercise political influence on the government. It is only a matter of time, perhaps ten years, before the migrant will be almost totally displaced from sugar beet production in the Red River Valley. Although there is no panacea for the migrants' complex problems, long-range planning in the areas of job training, education, and resettlement may mitigate the difficulties caused by the transition from manual to mechanized sugar beet production.¹⁶⁵ If no such planning and action is done, a slum existence in the already congested cities will be the destiny of the migrant and his children.¹⁶⁶

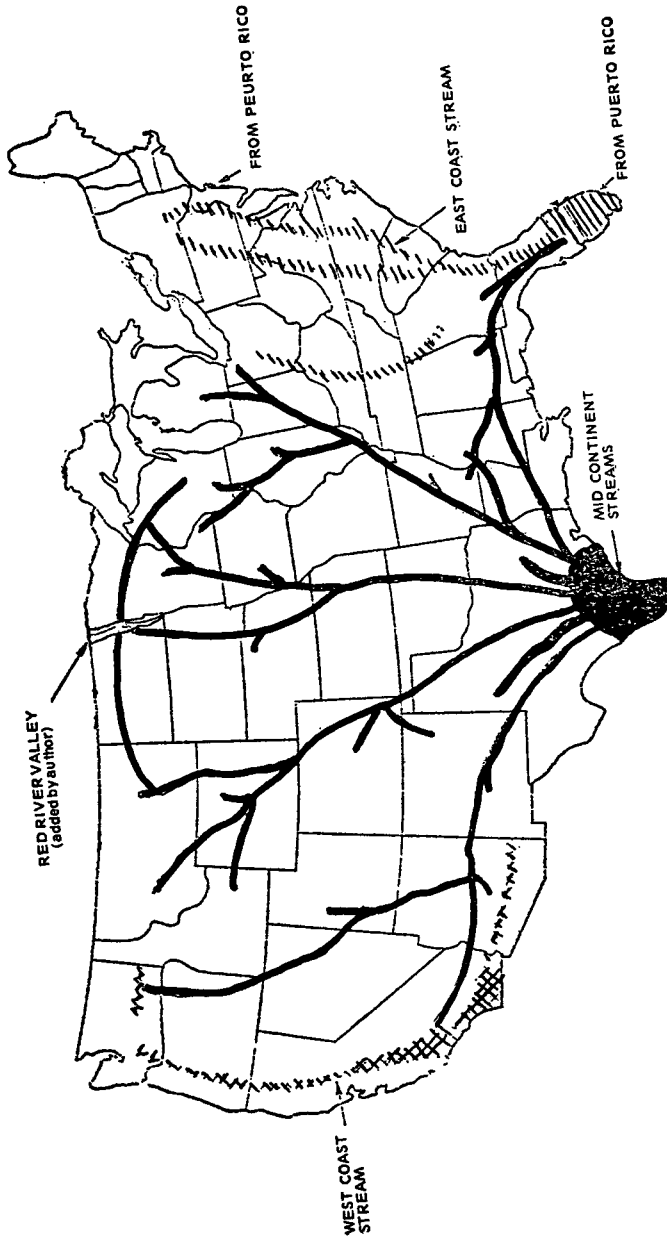
JOEL D. MEDD*

165. duFresne & McDonnel, *supra* note 19, at 283.

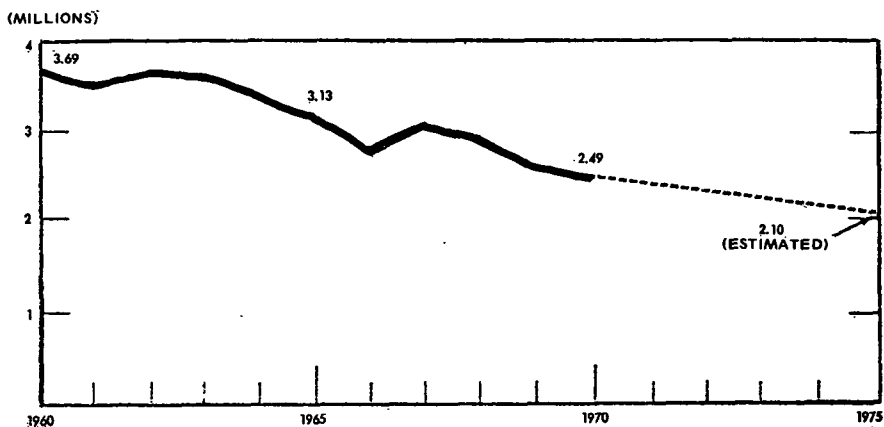
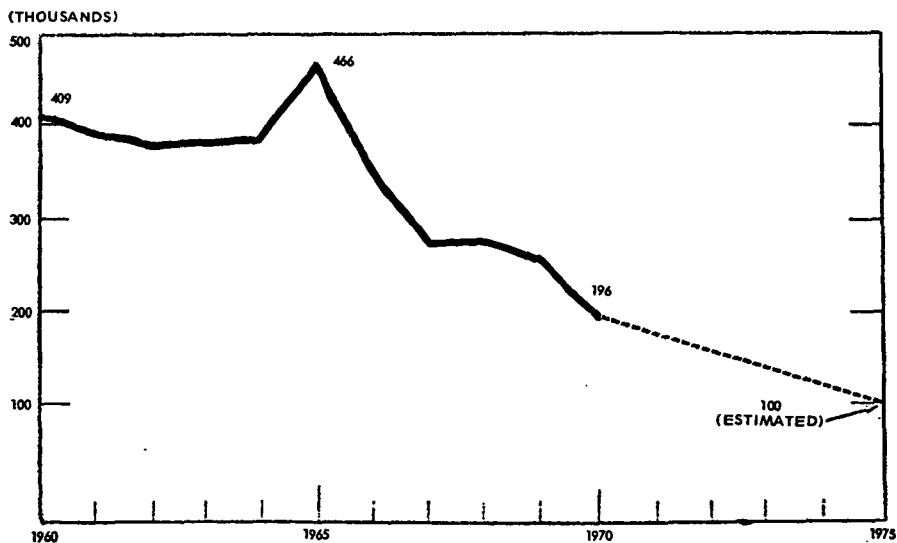
166. *Powerlessness Hearings*, *supra* note 3, pt. 7-B at 4975.

* The author of this note spent a summer as a "Law Student Outreach Worker" for the Minnesota Migrant Council covering the northern Red River Valley in North Dakota and Minnesota.

APPENDIX A

TRAVEL PATTERNS OF SEASONAL MIGRATORY
AGRICULTURAL WORKERS

APPENDIX B

NUMBER OF FARMWORKERS
EMPLOYED BY YEAR*NUMBER OF MIGRATORY FARMWORKERS
EMPLOYED BY YEAR*

*Prepared from statistics furnished by the Department of Agriculture and the Department of Labor.